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10/043,153

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Phillip E. Morris

10541-6

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EXAMINER

NGUYEN, TAM M

ART UNIT

PAPER NUMBER

3764

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
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3 MONTHS

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/043,153

Applicant(s)

MORRIS, PHILLIP E.

Examiner

Tam Nguyen

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-10, 12-16, 21-33 and 37-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-10, 12-16, 25-33 and 37-39 is/are allowed.
- 6) ☒ Claim(s) 21-24 and 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Withdrawal of Final Rejection**

1. After further review of the prior art, the Final Rejection dated November 13, 2006 is withdrawn since claims 21 and 22, which had previously been allowed, are now rejected.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 21 recites the limitation "said housing member" in line 11. There is insufficient antecedent basis for this limitation in the claim. The Examiner will assume that applicant meant to use the term, "connecting member" to expedite the prosecution.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Salyar (4,867,439).

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3. As to claims 21 and 40, Salyar discloses an exercise machine comprising a rigid movable portion (340) engageable by a user, a resisting member (372) configured to apply a resistance to the rigid member, a variably adjusting member (394,428), a connecting member (400,404,406,414) moveably positionable above the rigid member and a tension member (418) disposed within the connecting member and engageable with the resisting member wherein the tension member is configured to compress as the resisting member applies said resistance and the adjusting member is configured to variably adjust said resistance by horizontally moving the resistance member relative to the adjusting member (see Figs. 6 and 9-13).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-24 rejected under 35 U.S.C. 103(a) as being unpatentable over Eschenbach (5,529,554) in view of Szymiski (4,438,921).

4. As to claim 22, Eschenbach discloses an exercise machine comprising a rigid moveable portion (110), a resisting member (108) connected to the rigid member to apply a resistance, a variable adjusting member (122) and a connecting member (112) to connect the resistance member to the adjusting member wherein the connecting member is movable positionable around the entire rigid member which would allow for the connecting member to be positioned above the rigid member, the resisting member

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includes a band brake and the rigid member includes a hub with the band brake positioned to surround the hub and the variably adjusting member includes a knob (see Fig. 1). Eschenbach does not disclose that the machine comprises a counting member and display connected to the variably adjusting member to measure and display the resistance on said rigid member. Szymiski discloses a similar exercise device comprises a counting member and display (29) connected to a variably adjusting member (26) to measure and display the resistance on said rigid member (see Figs. 1, 1A and 5). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Szymiski's counting member and display to Eschenbach's adjustment member such that a user can readily see the adjustable resistance level during exercise.

***Allowable Subject Matter***

5. Claims 2-10, 12-16, 25-33 and 37-39 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cary O'Connor can be reached on 571-272-4715. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 5, 2007

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Tam M. Nguyen  
Examiner  
Art Unit 3764



LORI AMERSON  
PRIMARY EXAMINER